

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Chapter 7  
Bky. Case No. 04-31875

John C. Mrozik,

NOTICE OF MOTION AND MOTION  
OBJECTING TO EXEMPT PROPERTY

Debtor.

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TO: THE COURT, UNITED STATES TRUSTEE, THE DEBTOR AND HIS ATTORNEY:

1. Dorraine A. Larison, Trustee of the bankruptcy estate of the above-named debtor, moves the court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at 9:30 a.m. on September 20, 2004, in Courtroom No. 228B, at the United States Courthouse, at 316 North Robert Street, in St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than September 13, 2004, which is seven (7) days before the time set for the hearing, or filed and served by mail not later than September 10, 2004, which is ten (10) days before the time set for the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, 11 U.S.C. § 522, Bankruptcy Rule 5005 and 9014, Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on March 29, 2004, as a Chapter 13 case. This case was converted to a Chapter 7 case on May 26, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 522, and Bankruptcy Rule 4003 and Local Rule 4003-1(a). This motion is filed under Bankruptcy Rule 9014 and Local Rules 9001-1 to

9001-6 and 9013-1 to 9013-5. Movant requests relief with respect to debtor's claims for exemption.

6. Debtor has claimed as exempt the following assets which the trustee objects to as follows:

a. The debtor's homestead legally described as:

That part of the Southeast Quarter (SE $\frac{1}{4}$ ) of Section 6, Township 37, Range 27, Mille Lacs County, Minnesota described as follows: Commencing at the point of intersection of the northerly right of way line of State Trunk Highway No. 23 with the west line of said Southeast Quarter (SE $\frac{1}{4}$ ); thence northeasterly along said northerly right of way line a distance of 1100.00 feet to the point of beginning of the property being described; thence southeasterly at right angles a distance of 150 feet to the southerly right of way line of said State Highway Trunk No. 23; thence northeasterly along said southerly line a distance of 660.00 feet; thence northwesterly at right angles, to the point of intersection with the north line of said Southeast Quarter (SE $\frac{1}{4}$ ); thence westerly along said north line to the point of intersection with a line beginning perpendicular to said northerly right of way of State Trunk Highway 23 and running northwesterly from said point of beginning; thence southeasterly along said perpendicular line to said point of beginning.

b. All items claimed exempt under 11 U.S.C. § 522(d)(5).

7. The trustee objects to the debtor's claims of exemption on the following basis:

a. The Seventh Judicial District Court for the State of Minnesota found that the debtor's homestead was valued at \$200,000 in the Findings of Fact, Conclusions of Law, Order for Judgment and Judgment and Decree entered on December 17, 2003, which was approximately three months prior to the date of filing. The debtor had executed a Marital Termination Agreement prior to the entry of Judgment in which he stipulated that the value of the homestead property was \$200,000. It is the trustee's position that the homestead is valued at \$200,000 instead of the \$180,000 listed on the debtor's Schedule A. As a result, the amount of equity in the homestead exceeds the amount that may be claimed under 11 U.S.C. § 522(d)(1).

b. Because the homestead equity exceeds the amount available under 11 U.S.C. § 522(d)(1), the debtor may claim assets under 11 U.S.C. § 522(d)(5) exempt only to the value of \$975. The debtor has claimed assets under 11 U.S.C. § 522(d)(5) with a total value of \$8,725 which exceeds the amount the debtor may claim under this section.

WHEREFORE, Applicant moves the court for an order sustaining trustee's objection to claimed exempt property and such other relief as may be just and equitable.

Dated this 18th day of August, 2004.

/e/ Dorraine A. Larison  
Dorraine A. Larison  
I.D. No. 203609  
GRAY, PLANT, MOOTY,  
MOOTY & BENNETT, P.A.  
1010 West St. Germain  
Suite 600  
St. Cloud, MN 56301  
(320) 252-4414  
Attorneys for Trustee

VERIFICATION. I, Dorraine A. Larison, the movant declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: August 18, 2004

/e/ Dorraine A. Larison  
Dorraine A. Larison, Trustee

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Chapter 7  
Bky. Case No. 04-31875

John C. Mrozik,

UNSWORN CERTIFICATE OF SERVICE

Debtor.

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I, Jean M. Eisenschenk, declare under penalty of perjury that on August 18, 2004, I mailed the following documents:

**NOTICE OF MOTION AND MOTION OBJECTING TO EXEMPT PROPERTY AND PROPOSED ORDER**

by first class mail postage prepaid to each entity named below at the address stated below for each entity:

UNITED STATES TRUSTEE  
1015 US COURTHOUSE  
300 SOUTH FOURTH STREET  
MINNEAPOLIS MN 55415

ERIC J SHERBURNE  
ATTORNEY AT LAW  
332 MINNESOTA ST STE W-1650  
ST PAUL MN 55101

JOHN C MROZIK  
16234 HIGHWAY 23  
FORESTON MN 56330

SHELDEN M VIE  
ATTORNEY AT LAW  
503 JACKSON AVE N W  
ELK RIVER MN 55330

Executed on: August 18, 2004

/e/ Jean M. Eisenschenk  
Jean M. Eisenschenk  
GRAY, PLANT, MOOTY,  
MOOTY & BENNETT, P.A.  
1010 West St. Germain, Suite 600  
St. Cloud, MN 56301

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Chapter 7  
Bky. Case No. 04-31875

John C. Mrozik,

ORDER

Debtor.

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At St. Paul, Minnesota, \_\_\_\_\_, \_\_\_\_\_.

Upon the Objection to Claimed Exempt Property filed by the Trustee and upon all the files and records of the proceedings herein,

THE COURT FINDS:

1. That the debtor's homestead is valued at \$200,000.

IT IS ORDERED:

1. The debtor's homestead legally described as follows:

That part of the Southeast Quarter (SE $\frac{1}{4}$ ) of Section 6, Township 37, Range 27, Mille Lacs County, Minnesota described as follows: Commencing at the point of intersection of the northerly right of way line of State Trunk Highway No. 23 with the west line of said Southeast Quarter (SE $\frac{1}{4}$ ); thence northeasterly along said northerly right of way line a distance of 1100.00 feet to the point of beginning of the property being described; thence southeasterly at right angles a distance of 150 feet to the southerly right of way line of said State Highway Trunk No. 23; thence northeasterly along said southerly line a distance of 660.00 feet; thence northwesterly at right angles, to the point of intersection with the north line of said Southeast Quarter (SE $\frac{1}{4}$ ); thence westerly along said north line to the point of intersection with a line beginning perpendicular to said northerly right of way of State Trunk Highway 23 and running northwesterly from said point of beginning; thence southeasterly along said perpendicular line to said point of beginning.

is not exempt to the extent that the equity in the homestead exceeds \$18,450.

2. The assets claimed exempt by the debtor under 11 U.S.C. § 522(d)(5) are not exempt to the extent the value of the items exceeds \$975.

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Gregory F. Kishel  
CHIEF UNITED STATES BANKRUPTCY  
JUDGE